

Remarks

Election/Restrictions

In the Office Action, the Examiner has noted that claims 1-10 and 14-28 are subject to restriction (however, the Examiner has mistakenly noted that claims 1-13 are pending in the application on page 2 of the Office Action). In particular, the Examiner has given a twelve-way restriction in accordance with 35 U.S.C. 121 and 372 as follows:

<i>Inventions</i>	<i>Class/Sub-class</i>
Group I. Claims 1-6, 10 and 14-21 drawn to compounds and compositions of formula (I) wherein R ₄ is pyridine.	Not provided
Group II. Claims 1-6, 10 and 14-21 drawn to compounds and compositions of formula (I) wherein R ₄ is pyrazine.	Not provided
Group III. Claims 1-6, 10 and 14-21 drawn to compounds and compositions of formula (I) wherein R ₄ is pyrimidine.	Not provided
Group IV. Claims 1-6, 10 and 14-21 drawn to compounds and compositions of formula (I) wherein R ₄ is pyridazinone.	Not provided
Group V.- Claims 7-9, drawn to methods of preparing compounds of Group VIII groups I-IV respectively.	Not provided
Group IX.- Claims 22-28, drawn to method of using compounds of groups I-Group XII IV respectively	Not provided

As indicated above, through this response, Applicants provisionally elect invention Group II *with traverse*, namely, claims 1-6, 10 and 14-21, drawn to compounds and compositions of formula (I) wherein variable R₄ is pyrazine. In addition, as noted by the Examiner, Applicants further elect provisionally with traverse a sub-generic species falling within the scope of invention Group II to be a compound of formula I, wherein R₄ is pyrazine. A single compound within the scope of this sub-generic species is compound no. 28 found in Table 1 in the specification at page 59, lines 29-31. Please note that all of elected claims 1-6, 10 and 14-21 read on this elected subgeneric species. Examiner's imposition of twelve-way restriction is respectfully traversed below.

Applicants respectfully submit that this twelve-way restriction as imposed by the Examiner is improper based on the following grounds. In particular, Applicants respectfully submit that the search of all of the claims 1-10 and 14-28 should not impose any undue burden on the Examiner. Applicants' assertion is based on the fact that all of invention Groups I to XII are believed to be in the same search class and/or subclass. However, as noted above in the Table, the Examiner has not provided any search classes and/or subclasses for these invention groups.

Nevertheless, it is submitted that invention Groups I to IV are directed respectively to a class of compounds of formula (I), all of which differ only by the variable R_4 all of which are six-membered nitrogen containing heteroaryl groups, namely, pyridine, pyrazine, pyrimidine, pyridazine or pyridazinone. Thus it is submitted that it is improper to split these nitrogen containing heteroaryl groups into four different inventions. Instead, these should have been objected to as being various sub-generic species within a genus of heteroaryl group. Further, the Examiner should have requested Applicants to select one sub-generic species pursuant to the provisions of 37 CFR 1.141. Once the elected species was found to be allowable then the Examiner should have continued to search other sub-generic species until a reasonable number of sub-generic species have been searched which are only four in the instant case. However, the Examiner has not done this. Therefore, it is respectfully submitted that the Examiner has erred in imposing this twelve-way restriction.

In view of the foregoing, Applicants have made this election with the understanding that, if the elected species of pyrazine is found allowable, the Examiner will continue to examine the full scope of the pending claims to the extent necessary to determine patentability of these pending claims, i.e., extending the search to a reasonable number of the non-elected species, i.e., pyridine, pyrimidine, pyridazine or pyridazinone, as is the duty according to M. P. E. P. § 803.02 and 35 U.S.C. § 121. It is again reminded that Applicants are entitled to consideration of claims to additional species which depend or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Finally, it is respectfully submitted that Applicants will be entitled to request rejoinder of method of preparation claims of invention Groups V to VIII, and method of use claims of invention

Groups IX to XII commensurate in scope with the allowable product claims of invention Groups I to IV pursuant to the guidelines set forth in MPEP § 821.04(b).

In the event the Examiner wishes to contact the undersigned regarding any matter, please call (collect if necessary) the telephone number listed below.

Applicants believe there are no fees due for this response. However, if the Examiner deems that fees are due, please charge these fees to Deposit Account No. **18-1982** for sanofi-aventis U.S. LLC, Bridgewater, NJ. Please credit any overpayment to Deposit Account No. **18-1982**.

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Respectfully submitted,

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